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an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the futures, options or cash market positions which support the claim of exemption; and the relevant business relationships supporting a claim of exemption.

[53 FR 41571, Oct. 24, 1988, as amended at 56 FR 14315, Apr. 9, 1991; 57 FR 44492, Sept. 28, 1992; 58 FR 17982, Apr. 7, 1993; 60 FR 38193, July 25, 1995; 67 FR 62353, Oct. 7, 2002]

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 510.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts.* For the purpose of applying the position limits set forth in § 510.2, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* For the purpose of applying the position limits set forth in § 150.2:

(1) A commodity pool operator having ownership or equity interest of 10% or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator;

(2) A trader that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10% or greater in a pooled account or positions who is also a principal or affiliate of the operator of the pooled account must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader, *provided, however*, that the trader need not aggregate such pooled positions or accounts if:

(i) The pool operator has, and enforces, written procedures to preclude the trader from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The trader does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The trader, if a principal of the commodity pool operator, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool;

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25% or greater in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader.

(d) *Trading control by futures commission merchants.* The position limits set forth in § 150.2 of this part shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates in a discretionary account, or in an account which is part of, or participations in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or its separately organized affiliates, unless:

(1) A trader other than the futures commission merchant or the affiliate directs trading in such an account;

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(2) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10% or more in, or controls.

(e) *Call for information.* Upon call by the Commission, the Director of the Division of Market Oversight or the Director's delegatee, any person claiming an exemption under paragraphs (c) or (d) of this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, or the relevant business relationships supporting a claim of exemption.

[64 FR 24047, May 5, 1999, as amended at 67 FR 62353, Oct. 7, 2002]

§ 150.5 Exchange-set speculative position limits.

(a) *Exchange limits.* Each contract market as a condition of designation under part 5, appendix A, of this chapter shall be bylaw, rule, regulation, or resolution limit the maximum number of contracts a person may hold or control, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon. This section shall not apply to a contract market for which position limits are set forth in § 150.2 of this part or for a futures or option contract market on a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market. Nothing in this section shall be construed to prohibit a contract market from fixing different and separate position limits for different types of futures contracts based on the same commodity, or from fixing different position limits for different futures or for different delivery months, or from exempting positions which are normally

known in the trade as "spreads, straddles, or arbitrage," or from fixing limits which apply to such positions which are different from limits fixed for other positions.

(b) *Levels at designation.* At the time of its initial designation, a contract market must provide for speculative position limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price;

(2) Individual nonspot or all-months-combined levels must be no greater than 1,000 contracts for tangible commodities other than energy products;

(3) Individual nonspot or all-months-combined levels must be no greater than 5,000 contracts for energy products and nontangible commodities, including contracts on financial products.

(c) *Adjustments to levels.* Contract markets may adjust their speculative limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price; and

(2) Individual nonspot or all-months-combined levels must be no greater than 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5% thereafter or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery